

1 October 29, 2007

2 DOCKET NO. 33323

PETITION OF UTEX	§	PUBLIC UTILITY COMMISSION
COMMUNICATIONS CORPORATION	§	
FOR POST-INTERCONNECTION	§	
DISPUTE RESOLUTION WITH AT&T	§	
TEXAS AND PETITION OF AT&T	§	
TEXAS FOR POST-	§	
INTERCONNECTION DISPUTE	§	
RESOLUTION WITH UTEX	§	
COMMUNICATIONS CORPORATION	§	OF TEXAS

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4 **PREFILED REBUTTAL TESTIMONY OF SOREN TELFER ON BEHALF OF**
5 **UTEX COMMUNICATIONS CORPORATION**

6 **Q: PLEASE STATE YOUR NAME.**

7 A: Soren Telfer

8 **Q: ARE YOU THE SAME SOREN TELFER THAT PRESENTED DIRECT**
9 **TESTIMONY IN THIS MATTER?**

10 A: Yes.

11 **Q: WHAT DPL ITEMS AND AT&T TEXAS WITNESSES WILL YOU BE**
12 **ADDRESSING IN YOUR REBUTTAL TESTIMONY?**

13 A: I will be rebutting the testimony of Jason Constable, William Cole, Peter Andrews and
14 Lynn Layman. The testimony will cross reference the DPL item(s) identified by these AT&T
15 Texas witnesses. I will note up-front that their DPL Item organization does not always
16 correspond to the DPL Item discussion item in our direct testimony where we anticipated and
17 therefore already pre-rebutted much of what they say. AT&T Texas has offered redundant
18 testimony in many instances, or its witnesses refer to or quote from other AT&T Texas
19 witnesses, and quite often attempt to or purport to rely on other AT&T Texas witnesses as the
20 basis or part of the basis for their proffered opinions. For the most part I will focus on the
21 original source of the opinion or conclusion in issue, and rebut the opinion or conclusion. To the

1 Furthermore, the conversion to IP allows UTEX-controlled switching elements a kind of
2 access into the inner workings of the protocol that is generally unavailable on embedded TDM
3 equipment, and certainly not on the kind of switch which Mr. Constable seems to think of as
4 state of the art. We have written our own custom software that interfaces with IUA and M3UA
5 and provides novel mid-call processing capabilities that enable novel features and services to
6 PSTN users (such as Universal Global Title). Mr. Constable's claim of no net protocol
7 conversion on a PSTN-IP-PSTN call is technically correct; except that he fails to mention that
8 this is only because our switching elements are required to "dumb" themselves back down to
9 allow the terminating PSTN leg. Using these techniques is precisely how we can accomplish
10 what Mr. Constable believes is impossible: that an ordinary PSTN end user could use a POTS
11 line and basic handset to check her email, or otherwise participate in the Internet. UTEX is
12 committed to enabling these kinds of features and the conversion and inter-working of legacy
13 TDM protocols to IP is one of the fundamental techniques.

14 **Q: MR. CONSTABLE SEEMS TO CLAIM THAT SINCE SOME OF YOUR**
15 **CUSTOMERS PROVIDE SERVICES TO TRADITIONAL IXCS, ALL OF THE**
16 **TRAFFIC THAT THAT CUSTOMER PASSES TO UTEX MUST BE PSTN**
17 **ORIGINATED [CONSTABLE PAGE 11 LINE 4]. HOW WOULD YOU**
18 **CHARACTERIZE THIS POSITION?**

19 A: Factually inaccurate, intentionally misleading, and specious. His argument provides yet
20 another textbook example of hasty generalization. The reality of the industry is that many
21 operators carry a mix of PSTN and IP originated traffic on their networks. This is due either to a
22 conscious business decision, or because they receive traffic from another source whose traffic
23 meets this profile. This fact, however, does not prove that these operators are interested in or

1 intending to commingle the traffic so as to wrongly pass it off as "enhanced." Instead, they are
2 merely trying to maximize the value of their switch assets.

3 UTEX does not disqualify a customer if they carry a mix of traditional and Internet
4 originated traffic, or if they have customers who do so. We simply require that their customers
5 implement the necessary routing logic to make sure that only enhanced traffic is passed to
6 UTEX. In some cases, this may require that our customer work in turn with their customers to
7 achieve this. Furthermore, the "studies" AT&T has finally supplied that they assert supports their
8 claim that "all," "most," or "much" of UTEX's traffic is not enhanced actually shows that on
9 average the amount of Feature Group D originated traffic is only on the order of 3% and
10 generally less. It must be understood that UTEX had been requesting this data for over two years,
11 and had anticipated receiving it long ago so we could take any necessary enforcement action.
12 Given that this data was only produced two weeks before the hearing, I think the relative
13 volumes of traffic shown in the AT&T data proves that UTEX and its customers are actually
14 doing a very good job of policing their traffic. However, as I mentioned, we are committed to
15 removing all non-enhanced traffic, and so within 48 hours of analyzing the AT&T data, UTEX
16 notified its customers of the issue. Finally, it is important to reiterate that the AT&T study does
17 not prove or indicate that any of the captured FGD originated calls were not in fact enhanced.

18 The failure of AT&T's methods to detect the only truly relevant property of the traffic,
19 i.e. of qualifying as enhanced, is one reason UTEX cannot simply tell its customers to "turn off
20 carrier X." The other reason owes to the nature of the current PSTN itself. Contrary to AT&T's
21 dated view of traffic flows on the PSTN, non-local traffic does not categorically follow a LEC-
22 IXC-LEC pattern anymore. Instead, many carriers build in multiple potential paths for a given
23 call. This does not mean that non-enhanced traffic should be terminated as it were enhanced.

1 Instead, it means that many operators, such as UTEX's customers, receive the "mixed" traffic
2 without any desire on their part for it to be "mixed." UTEX has always acknowledged there
3 could be a small amount of unintentionally misrouted traffic that will traverse the UTEX network
4 despite our efforts. That is why we have offered ever since 2003 to cooperate with AT&T to
5 identify any problem traffic and get it removed. AT&T, however, does not want cooperation. In
6 fact, it wants the traffic to be there so it can use the issue to beat UTEX and all others into
7 submission by claiming extensive fraud. The problem for AT&T, however, is that its own
8 information shows any "misrouted" traffic on UTEX's network is *de minimus*.

9 **Q: IN YOUR DIRECT TESTIMONY, YOU STATED THAT IS IT MANIFESTLY**
10 **OBVIOUS THAT VOIP SERVICE PROVIDERS QUALIFY AS ENHANCED SERVICE**
11 **PROVIDERS UNDER THE FCC DEFINITION OF THE TERM. ARE THERE ANY**
12 **OTHER WAYS IN WHICH VOIP SERVICE PROVIDERS QUALIFY?**

13 A: Yes. All of the major VoIP and Voice Enabled Internet service providers that I am aware
14 of – including Skype, Vonage, Comcast Digital Voice, Time Warner Digital Voice, independent
15 Asterisk enterprise providers, operators of Cilantro, Broadsoft and other Class 5 VoIP switch
16 operators – offer voicemail and store and forward messaging capabilities to users. This fact
17 means that these operators also qualify as ESPs under the telemessaging portion of the
18 "enhanced service" definition in the ICA. So, there's more than one way in which they qualify.

19 **Q: MR. CONSTABLE STATES THAT CLEC OR ITS CUSTOMER CAN**
20 **MANIPULATE CPN TO "MASK THE ORIGINATING NATURE OF THE CALL"**
21 **[CONSTABLE PAGE 14 LINES 9-10]. MR COLE INSINUATES THAT UTEX IS**
22 **ENGAGING IN TRAFFIC "WASHING" [COLE PAGE 12, LINE 8]. HOW DO YOU**
23 **RESPOND?**

1 A: Both witnesses are correct in that a CLEC or its customer may manipulate the CPN. Of
2 course, a LEC can also decide to configure some or all of its switches such that they record all
3 zeroes for the CPN, even when non-empty CPN was passed on the call, like AT&T has done
4 with UTEX's signaling content. You can allege malice, incompetence or happenstance on either
5 side. Of course, the allegation itself proves nothing. AT&T has never presented, and I suspect
6 never will present, evidence UTEX or any of its Customers have manipulated CPN on any call.
7 As a matter of policy, UTEX will never manipulate a single bit of the CPN it receives from its
8 customers unless and until we are ordered to do so, or are requested to do so by AT&T to
9 ameliorate AT&T's billing problems. UTEX believes fidelity should be the bedrock principle
10 related to CPN and CPN should not and does not by our contract or by law have to be
11 represented consistent with sub-elements of the LERG. For Legacy telephony, the CPN is the
12 numeric identity supplied by the originating End Office Switch of the ILEC. For everything else,
13 CPN is simply the service provider's best attempt at supplying a useful and unique originating
14 party identifier. Furthermore, AT&T's own tests have shown that more than 97% of our traffic
15 comes from endpoints that do not reside on the PSTN. They often do not have LERG numbers to
16 send, and when they do send a LERG number it does not identify the geographical end point.

17 **Rebutting Constable's "ISDN INTERCONNECTION ISSUES"**

18 **Issue 1: Should AT&T Texas be ordered to process UTEX's ISDN Interconnection orders**
19 **and implement the decision in Docket 29944?**

20 **Issue 2: Did UTEX meet its obligations, as spelled out in the Docket No. 29944 Arbitration**
21 **Award, for obtaining ISDN Interconnection?**

22 **Issue 3: If not, were such obligations a condition precedent to AT&T Texas's obligation to**
23 **provide ISDN Interconnection?**

24 **Issue 4: Did AT&T Texas fail or refuse to provide UTEX with ISDN Interconnection under**
25 **the parties' ICA?**

26 **Issue 12: Refusal to accept and process ISDN interconnection orders.**

1 display of arrogance for Mr. Cole to say that we have never disputed the accuracy of AT&T's
2 data. But truthfully, this is just another aspect of the confidence game they are playing with the
3 Commission over the quality of their data.

4 **Q: MR. ANDREWS SPENDS QUITE A BIT OF TIME ATTEMPTING TO**
5 **SUPPORT THE QUALITY AND CONSISTENCY OF THE AT&T DATA, AND BY ALL**
6 **APPEARANCES THERE ARE QUITE A FEW FACTS IN HIS STATEMENTS. HOW**
7 **WOULD YOU CHARACTERIZE HIS STATEMENTS?**

8 Intentionally misleading, and they generally fail to prove his point. As I mentioned
9 above, Mr. Andrews is another AT&T witness who at least attempted to "show his work."
10 Unfortunately, for the most part he simply regurgitates a meal of undigested technical references.
11 Invoking the Universal Serial Bus 2.0 specification does little to change the fact that UTEX has
12 demonstrated that the SS7 data that AT&T provided to UTEX contains call records with negative
13 call durations. Furthermore, in sworn testimony, Mr. Andrews seemed to be unfamiliar with
14 scientific units when he claimed that the AT&T SS7 data could be matched up to the AT&T
15 AMA data with *millisecond* accuracy [Docket 33323, August 28, 2007 PHC Tr. Page 37, lines 6-
16 16]. UTEX was only able to match 50% of the data with an accuracy that was *three thousand*
17 *times* larger than one millisecond

18 **Rebutting AT&T TEXAS' Claims Regarding the Nature of UTEX's Traffic and CPN in**
19 **general**

20 **Issue 50: What constitutes valid or adequate CPN under the ICA?**

21 **Did UTEX deliver valid originating CPN on at least 90% of all calls it terminated on**
22 **AT&T Texas's network during each period covered by the AT&T Texas CABs bills**
23 **wherein the intraLATA access charges have been assessed for No-CPN traffic?**

24 **What amount does UTEX owe AT&T Texas, if any, for failure to deliver valid or**
25 **adequate CPN on at least 90% of all calls terminated to AT&T Texas's network?**

26 **Issue 51: Does the ICA define CPN? If so, what is that definition?**

1 **Issue 52: If the ICA defines CPN, is that definition ambiguous? If so, what was the**
2 **intention of the parties at the time of contract formation?**

3 Cole testimony (and those who reference him) pages 12-18. Layman (and those who reference
4 her) pages 5-11

5 **Issue 36: Which IXC's, if any, have routed telephone toll traffic through UTEX's**
6 **interconnection facilities so as to avoid switched access charges from AT&T Texas?**

7 Constable testimony (and those who reference him) page 19

8 **Q: AT&T WITNESSES COLE, CONSTABLE AND LAYMAN CLAIM THAT AT&T**
9 **CPN POLICIES HAVE BEEN CONSISTENT AND CLEAR FOR ALL OF AT&T'S**
10 **DEALINGS WITH UTEX. HOW WOULD YOU CHARACTERIZE THIS POSITION?**

11 A: Factually false, and intentionally misleading. As I stated in my direct testimony, while
12 AT&T's validity concept has no place next to the word CPN in the ICA, neither has it received a
13 consistent definition from the various witness who espouse its meaning. For a long time, the only
14 attribute AT&T appeared to attach to CPN was the term "valid," which we were told meant that
15 the CPN must represent a 10-digit number active in LERG. Of course, this would not explain
16 why AT&T told UTEX that "999-999-9999" was "good" CPN during the August 30, 2005 joint
17 testing, but it was a relatively persistent definition nonetheless. However, in AT&T direct
18 testimony, they appear have shifted to another position, that of simply claiming that a call is
19 either "Without CPN" or "With CPN" [Layman Page 7 Line 2]. Unfortunately, their new
20 definition is considerably worse than the old one if we are truly interested in making progress on
21 the CPN issue. To most observers and industry participants, a call "Without CPN" would mean
22 that the SS7 signaling messages associated with that call either did not contain an ISUP Calling
23 Party Number Parameter, or that parameter was of length zero. UTEX is particularly interested in
24 this class of traffic, because as I mention elsewhere, our policy is to eliminate this kind of traffic
25 as much as possible, since it does nothing to identify the originating user and facilitate the kind
26 of "vertical services" that Layman references. Voice Embedded Internet-based communications,

1 services and applications traffic does not always present a NANP CPN. AT&T's new definitions
2 clearly do nothing but confuse this issue.

3 Furthermore, it appears that AT&T is aware of the insipidness of their new definition,
4 since Layman attempts to define "Without CPN" another way: that it is merely the logical
5 complement of "With CPN." This pseudo-logical presentation is simply an attempt to apply
6 some logical polish to their plainly illogical turd of a definition. In reality, this definition shows
7 us clearly how AT&T absolutism allows them to only see black and white on almost every issue.
8 Finally, Layman attempts to incorporate their earlier definitions by claiming that they are
9 "interchangeable" [Layman Page 7 Lines 6-10]. However, as with their treatment of the concepts
10 of "one," "much," or "all," they are simply prevaricating because they know that all of their
11 definitions are baseless.

12 **Q: HAVE YOU ANALYZED THE SUMMARY STUDY RESULTS THAT AT&T**
13 **FINALLY PROVIDED TO SUPPORT MR. COLE'S AND MR. CONSTABLE'S CLAIMS**
14 **THAT "MUCH," "MOST," OR "ALL" OF UTEX'S TRAFFIC IS IXC ORIGINATED?**

15 A: Yes. It is important to note that we first asked for this data in 2005, and we have told
16 AT&T repeatedly that if they gave us evidence of non-enhanced Feature Group D originated
17 traffic on our network, we would work immediately and expeditiously to remove it and remedy
18 the situation. Unfortunately, AT&T hid the actual data in their production, and intentionally
19 mislead us as to its true meaning and location. They went as far as to create two disjoint concepts
20 of "Three minute studies." However, on Tuesday October 23, 2007, at around 5:45 p.m. we were
21 finally informed where the information was, and given the "Rosetta Stone" by AT&T that
22 allowed us to interpret it.

1 **Q: WHAT DID YOU FIND IN YOUR ANALYSIS?**

2 A: The study results³ show that the traffic that originated from the AT&T 12 state region,
3 passed through a Feature Group D trunk, and arrived on the UTEX network did not exceed 10%
4 of total UTEX volume in the period of 8/2006 onward. In particular, in a typical month, the value
5 is actually closer to 2%. This low percentage of course makes claims about “most,” “much” or
6 “all,” the terms about which Mr. Constable equivocates in his testimony, very difficult to defend.
7 Furthermore, these studies do not prove that the traffic is not enhanced simply because it passed
8 through a traditional Feature Group D carrier. As I mentioned above, while it may be true that
9 there is no net protocol change on a PSTN-IP-PSTN call, there is certainly a net change in
10 content relative to the same call were it made PSTN-PSTN. Furthermore, as Mr. Cole probably
11 knew when he entered his direct testimony, all of the traffic that passes through one of UTEX’s
12 customers has been found by a court of law to qualify as “enhanced” and an “information
13 service” on multiple occasions, to the point that the last such declaration reflected clear
14 exasperation by the judge that he was continually forced to revisit the question.

15 **Q: WHAT DID YOU DO WITH THE INFORMATION ONCE IT WAS MADE**
16 **AVAILABLE TO YOU?**

17 A: Within twenty-four hours, we had analyzed it completely, and identified the customers
18 who had originated the calls identified in the AT&T study. By the following day, Mr. Feldman
19 had ordered a letter be drafted by our legal department to all of our customers who had an IXC
20 send more than 50 calls per day to alert them to the problem, referencing the specific carriers
21 involved, and reminding our customers that they can send us only enhanced traffic. Within forty-

³ AT&T Texas produced Excel spreadsheets created from the original output, after redacting a lot of necessary information. UTEX needs the original switch recordings and the original output related to the “study” before we can confirm any other conclusions from the study Mr. Cole mentions. UTEX has requested the Arbitrators to allow further rebuttal after we receive the information we need.

1 eight hours of receipt of the data, this letter was sent to those of our customers that had delivered
2 the traffic reflected in the AT&T "study."

3 **Rebutting Cole's Testimony on Issue 58**

4 **Issue 58: Does UTEX have an ICA obligation to provide CPN if its customer does not**
5 **provide a calling number that can be used to populate the CPN parameter in the**
6 **ISUP IAM for traffic handed to AT&T Texas?**

7 Cole (and those who reference him) page 18, Lines 14-16.

8 **Q: MR. COLE CLAIMS THAT UTEX DOES NOT UNDERSTAND ITS ROLE IN**
9 **CPN PRODUCTION AND TRANSMISSION. HOW WOULD YOU CHARACTERIZE**
10 **HIS POSITION?**

11 A: Factually incorrect and intentionally misleading. UTEX clearly understands where CPN
12 comes from on every call that might pass through its network. But, as Mr. Cole stated in emails
13 produced in discovery, he has no idea where the CPN comes from when the call originates from
14 a Skype user or any other user whose service provider does not opt to emulate NANP numbering
15 for origination. The UTEX policy is one of fidelity: we intentionally and uniformly do not
16 manipulate CPN. UTEX has never proposed to change and does not change CPN on calls which
17 originate with NANP-like numbers. The UTEX policy states that on calls that do not originate
18 with NANP-like CPN, something should be inserted to achieve interoperability between the
19 PSTN and Voice Embedded Internet-based communications, services and applications. AT&T
20 Texas is also wrong in its concept of "origination." For purposes of the ICA, UTEX is the
21 originating network and UTEX's customer is the originating party, regardless of who may have
22 initiated a call session and where that person is. For jurisdictional purposes, all of UTEX's ESP
23 traffic is jurisdictionally interstate but it is treated as local. This is precisely what the FCC
24 instructed SBC to implement for jurisdictional separations purposes [Public Notice, *Common*
25 *Carrier Bureau Issues Letter to SBC Regarding its Jurisdictional Separations Treatment of*

1 *Internet Traffic*, ASD 99-30, DA 99-912, 14 FCC Rcd 8178, 1999 FCC LEXIS 2190, (rel. May
2 1999)].

3 **Q: MR. COLE SEEMS TO PRESENT AN ARGUMENT THAT AT&T HAS NO**
4 **PROBLEM TAKING TRAFFIC WITH NON-LERG CPN, JUST SO LONG AS THE**
5 **TOTAL VOLUME DOESN'T EXCEED 10% OF UTEX'S TOTAL MINUTES. HOW DO**
6 **YOU RESPOND?**

7 A: Mr. Cole appears to be suffering from the misperception that he is an agent of a
8 regulatory body, and not an employee of UTEX's competitor. He is trying to make a policy
9 which effectively denies the existence of the ESP exemption, except for a limited number of
10 individuals whose quantity does not exceed 10% of UTEX's monthly call volume. The reality of
11 Voice Embedded Internet-based communications, services and applications is that looking to the
12 future, fewer and fewer operators will choose to emulate NANP-numbered endpoints. If AT&T
13 succeeds in its program of destroying the ESP exemption and is allowed to impose access on
14 enhanced calls, Voice Enabled Internet operators will either be forced out of business, or will
15 choose to simply not interoperate with the PSTN. Of course, as Mr. Ankum will testify, this will
16 result in a net loss of economic value for both networks. But if these networks stop
17 interoperating with the PSTN, there will no longer be any reason to use NANP numbers since
18 they provide zero intrinsic utility to VoIP end users. If on the other hand the importance and
19 validity of the ESP exemption is upheld, VoIP providers will no longer operate in fear of one day
20 receiving fraudulent billings from AT&T. As a result, they will gradually transition away from
21 NANP emulation. In either case, the total number of Voice Embedded Internet-based
22 communications, services and applications users will continue to grow. Mr. Cole's policy leaves
23 these users in the cold.